

Advisory Opinion

IECDB AO 2004-20

December 2, 2004

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the use of e-mail by a prohibited contributor. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B and rules in Iowa Administrative Code chapter 351.

OPINION:

Certain entities are prohibited from making campaign contributions. The issue has been raised concerning whether e-mail messages trigger these prohibitions.

Iowa Code section 68A.503 in pertinent part states:

“...it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation...or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly...to nominate, elect, or defeat a candidate for public office....”

Board rule 351—4.44(3) lists “long-distance lines, computers...or communication systems” that belong to a corporation, financial institution, or insurance company from being used to expressly advocate the nomination, election, or defeat of a candidate.¹

The Board is of the opinion that the statute and rule prohibit the use of e-mail sent from a computer belonging to a corporation, financial institution, or insurance company when the message expressly advocates the nomination, election, or defeat of a candidate.²

Iowa Code section 68A.505 and the Board's rules in 351—Chapter 5 prohibit the use of public resources for a political purpose.³ Specifically, rule 351—5.4(2)“d” prohibits using public resources to “produce and distribute communications that expressly advocate for or against candidate or that expressly advocate for or against ballot issues.”

The Board believes that the statute and rule prohibit the use of e-mails sent from a government computer that expressly advocate for or against candidates or ballot issues.

However, this does not include messages that advocate for or against a candidate for federal office.⁴

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹Corporations, financial institutions, and insurance companies are not prohibited from using their resources to make contributions to expressly advocate for or against ballot issues.

²This prohibition would not apply to a certified “political corporation” pursuant to rule 351—4.50.

³This includes resources belonging to the executive branch of state government, a county, city, public school, or other political subdivision.

⁴The definition of “candidate” in both the state campaign laws and the Board’s rules apply to individuals seeking “state or local public office.”